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File No. O. Munis Dist / 48

Legal **DEPARTMENT**

A **BRANCH**

Subject:— O. Munis. Dist.

Opinions under the Bombay Munis. District Act, 1901.

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File No. O. Munis. Dist. / 48

Std. Sectt. Slip 24 B e.

61-A

CONTENTS.

Legal Department File No.0. Munis Disctt./48.

Sr. No.	R.I.No./O.No.	Subject	Pages.
		Opinions under the B'bay Distt. Municipal Act, 1901.	
1.	321 10.1.48.	Re: levy of tax on cotton bales and oil. G. of I. Act, 1935.	1-2.
2.	539 16.1.48.	Re: levy of terminal tax on road-borne goods. sec.59.	3-4.
3.	853 12.1.48	Sec.10 and 166(2). Re: expenses of suit filed against president of the Municipality.	5-6.
4.	3444 9.4.48	Question whether the president can be removed from his office under sec.23(7) although there may not be sufficient evidence to prove the charges against him in a court of law	7-8.
5.	1638 16.2.48	Section 11(1) (ii) (c) Re: filling casual vacancies under old constitutions of the Municipalities.	9-10.
6.	4238 30.4.48.	Secs.46(1), 60, 71, secs.73 and 91 of B'bay M.Boroughs Act, 1925. Re: water charges levied under rules 187 and 188 of the Kurla Municipal Rules.	11-14.
7.	3857 5.7.48. 6787 20.7.48.	Clause (a) (ii) of the proviso to sec. 52. Re: extention of the electrification scheme beyond the Municipal limits.	15-18.
8.	384-Confl. 17.7.48.	Question "What legal position would be in case local bodies contributed towards a fund the amount of which was not likely to be ex necessarily utilised for the purposes mentioned in the various Acts concerning the local bodies or within the limits of the local bodies contributing towards the funds like "Mahatma Gandhi Memorial Fund".	19-22.

CONTENTS

Legal Department File No.....

Sr. No.	R.I.No./O.No.	Subject	pages.
9.	7769 14.8.48.	Sec.56(m) Sec.71 of the B.M.B. Act, 1925. Question whether it would be legal for municipalities to incur expenditure on erecting Statues of Mahatma Gandhi or other Monuments in celebration of the Independence Day.	23-26.
10.	9691 16.10.48.	Re: Elections of savanur State Municipality which has merged in Bombay Province. Question whether during the intervening period, the present Municipal Board would be competent to hold its regular meetings, or whether the work of the Municipality would be carried on by its President and Vice-President without any meeting of the Municipality.	27-30.
11.	79 4.1.49.	Re: Provision for appeals ~~xx~~ or applications against the decisions in election petition cases so far as local bodies are c oncerned.	31-32.

S.I./19.5.56. 5c.

Levy of tax on cotton bales and oil.

Bombay District Municipality Act, 1901, and Government of India Act, 1935.

Office of the R.L.A.

Neither "The Cotton Bales Tax" nor "The Groundnut Oil Manufacturing Tax" proposed to be levied by the Kapadwanj Municipality would be the professional tax. They are purely excise taxes which the Central Government alone has power to levy (see entry 45 in List I in the Seventh Schedule to the Government of India Act, 1935 and the decision of the Privy Council in Governor General Vs. Province of Madras, 47 B.L.R. 629 at page 635) when the Provincial Government has no power to levy such tax, much less could have the Kapadwanj Municipality (see section 59(2) of the Bombay District Municipal Act, 1901). Consequently the rules framed by the Kapadwanj Municipality for the levy of these taxes would be ultra vires. A fee of Rs.60 as usual may be charged to Municipality.

sd/- P.M.Lad/9.1.48.

Remembrancer of Legal Affairs.

U.R. to H. & L.G.D. No1321, dated 10th January 1948.

S.I./18.3.56. 4c.

Levy of terminal tax on road-borne goods.

Bombay District Municipal Act, 1901, and Government of India Act, 1935.

A.G's opinion No.12 of 1940 and R.L.A's Opinion No.4402, dated 30-4-1947.

The Mahmadabad Municipality, it appears, proposes to levy for the first time a terminal tax on the road-borne goods. As will appear from the opinion of the Advocate General, No.12 of 1940, sent to C.D. with this office u.r. No.3187, dated 1-4-40, levy of terminal tax on road-borne goods is not warranted by any of the entries in the three lists in the 7th Schedule to the Government of India Act, 1935. A terminal tax hitherto levied by the Municipality on rail-borne goods may be covered by clause (XI) of section 59 of the Bombay District Municipal Act and is therefore saved by the proviso to sub-section (2) thereof read with section 143(2) of the Government of India Act. The terminal tax which is now proposed to be levied on the road-borne goods would be a new tax, and it being beyond the competence of the legislature, it will not be legal for the Municipality to levy it.

The opinion of the Advocate General referred to above contemplates the levy of terminal tax on road-borne goods but it is doubtful whether there can be a terminal tax as such on road-borne goods. It is perhaps on this account that no mention of such tax is made in any of the three lists in the 7th Schedule to the Government of India Act. Entry 58 in List I refers to terminal tax but that is on goods or passengers carried by railway or air. When goods are carried by road, it may be possible to levy a cess on the entry of such goods into a local area for consumption, use or sale therein. It appears that the Municipality in the present case does not propose to levy cess apparently because the goods on which they intend to levy tax are not intended for consumption or sale within the municipal limits. But it may be possible to levy a cess on the entry of goods if such goods enter the municipal limits for use there. As stated in R.L.A's opinion No.4402,

dated the 30th April 1947, the word "use" must be given its natural plenary meaning. The Municipality may, therefore, examine the various goods on which it is intended to levy the proposed tax and see whether the goods entering its limits are any way used in the sense explained in the R.L.A's opinion referred to above and if so, take step to levy a cess on such goods.

Sd/- P.M.Lad/15/1.

Remembrancer of Legal Affairs.

U.R. to H. & L.G.D. No.559, dated the 16th January 1948.

S.I./18.5.56. 4c.

Expenses of suit filed against President

Bombay District Municipal Act, 1901.

The suit was filed for a declaration that Mr. Mohamad Beg's election as President was null and void because of the fact that the Chairman of the meeting at which Mr. Mohamad Beg was elected President wrongly disallowed the amendment to the proposal about the election of the President. The Municipality was not impleaded as a party to the civil suit and it is also true that Mr.Mohamad Beg Haji Bhula Beg was not also impleaded as President of the Municipality. Even on the liberal assumption that in electing Mr. Mohamad Beg the Municipality which under section 10 of the Bombay District Municipal Act, 1901 consists of elected councillors purported to exercise its powers under that Act, and that consequently what was challenged was the action of the Municipality itself, it cannot be contended that Municipal funds could be legally spent in defending the suit against him personally to which the municipality was not impleaded as a party. That could be done if there was a legal liability to indemnify Mr.Mohamad Beg in terms of section 165(2) which reads as follows:-

> "The Municipality may make compensation out of the Municipal funds to any person sustaining any damage by reason of the exercise of any of the powers vested in them, their Officers and servants under this Act."

The section embodies the principle enunciated by Scrutton J. in Attorney-General v. Thomson (1913) 3 K.B.D. 198 at p.208:-

> "Whenever a duty is imposed on a public body and costs incidentally and necessarily arise in reasonably endeavouring to uphold facts done in alleged pursuance of that duty or in questioning the propriety of the acts done to enforce that duty, the public authority may defray such expenses out of its corporate funds. It appears to me a matter of public interest that persons called upon to exercise a public duty and reasonably incurring expenses in endeavouring to support their acts in purported exercise of that duty, should not be mulcted in their private purse but should be indemnified from public funds."

It would be rather far fetched to hold that Mr.Mohamad Beg sustained any damage by reason of his election and consequent exposure to the risk of a suit. The view taken by the Collector is correct.

54-P.H.Lnd/10.1.

Remembrancer of Legal Affairs.

U.R. to H.& L.C.D. No.852, dated the 12th January, 1943.

S.I./18.5.56. 4c.

Presumably the R.L.A's advice is sought on the question whether the President can be removed from his office under section 23(7) of the Bombay District Municipal Act, although there may not be sufficient evidence to prove the charges against him in a court of law. Under section 23(7) every President shall be removable from his office as such President for misconduct or neglect of, or incapacity to perform, his duty. The "misconduct" referred to in this section is misconduct qua President, i.e., committed during the term of his office. In this particular case the conduct complained of is, moreover, in relation to the exercise of his duties and authority as President. That the conduct amounts to misconduct can admit of no doubt whatsoever. By "misconduct" we mean "wrong conduct" or "improper conduct" or "conduct in breach of or contrary to the duties deliberately and with a wrongful intention". The conduct of the President in relation to the appropriation, disposal and substitution of the cement bags would certainly amount to "misconduct" within this meaning. There should, therefore, be no objection to the removal of the President irrespective of the further question whether the evidence is sufficient to sustain a prosecution for misappropriation in a court of law.

P.H.Lad/9/4.

Remembrancer of Legal Affairs.

U.R. to H. & L.C.D. No.5444, dated 9th April 1948.

S.I./18.5.56. 4c.

Filling casual vacancies under old constitutions of the Municipalities.

Bombay District Municipal Act, 1901, sec.11(1) (ii) (c).

It appears that the Health and Local Government Department is considering the question whether it would not be possible to mention in the Government Resolution the date from which the new constitution of a Municipality should come into force or in the alternative to make some provision for keeping in force the present constitution of a Municipality for a stipulated period so that the casual vacancies may be filled under the present constitution. The under Secretary, Health and Local Government Department, considers that the mention of a specific date from which the revised constitution is to come into force would not solve the difficulty and suggests that the best course would be to direct that the next general elections after the issue of the orders and all elections whether general elections or by-elections after the next general elections should be held pending further orders according to the revised constitution. H.M.(H. & L.G.D.) has approved this and added that all such by-elections prior to the next general elections after the issue of orders revising the Municipal constitution shall be held according to the old constitution. The R.L.A. is requested to advise whether the proviso suggested by the H.M. (H.& L.G.D.) would meet the difficulty.

It appears that Government intends to change the constitutions of Municipalities before the expiry of the period of their office and still to provide for filling casual vacancies under the old constitutions if such vacancies occur before the general elections are held. Clause (c) sub-clause(ii) of section 11(1) of the Bombay District Municipal Act, 1901, empowers Government to make rules consistent with this Act for prescribing the number and extent of the wards to be constituted in each Municipal District, the number of councillors to be elected for each ward and the number of seats, if any, to be reserved for the representation of women, Muslims Harijans, backward tribes, Indian Christians and Anglo Indians, clause (e) of section 10(1) of the Bombay

Municipal Boroughs Act contains a similar provision. Consequently, there would be no legal objection to Government making a rule in respect of each Municipality prescribing the number and extent of the wards to be constituted etc., that is to say, the constitution of a Municipality; and if it be ordered that such rule should come into operation immediately, the new constitution will be operative even before the general elections are held. In exercise of this rule making power there would be no legal objection to inserting a proviso in such rule to the following effect:

> "Notwithstanding anything contained in this rule, all casual vacancies occuring before the next general elections are held under the new constitution shall be filled according to the old constitution and the Municipal election roll in operation on the date of this rule shall continue in operation until fresh election roll is prepared for holding general elections, and all the provisions under the old constitution in regard to the division into wards, their boundaries and the number of councillors to be elected for them and the holding of ward elections in force immediately before the date of this rule shall continue in force for the purposes of holding by-elections."

If such a proviso is added to the rule the object in view can be achieved.

sd/- P.M.Iad/16.2

Remembrancer of Legal Affairs.

U.R. to H. & L.G.D. No.1638, dated the 16th February 1948.

S.I./18.5.56. 4c.

Bombay District Municipal Act, 1901.

water charges levied under rules 187 and 188 of the Kurla Municipal Rules.

It appears that the Kurla Borough Municipality proposes to amend rules 187 and 188 of the Kurla MunicipalRules increasing the water rates and meter hire rate. It is contended by the President of the Kurla Municipality on the authority of the decision of the Sind Court in the Committee of Management of Hyderabad vs. Ramchand 16 Sind. L.R.p.98, that in respect of these amendments it is not necessary that the procedure prescribed by section 75 of the Bombay Municipal Boroughs Act, 1925, should be complied with inasmuch as the water charges are not a tax. The Commissioner does not agree with the view of the President of the Kurla Municipality. However, the Health and Local Government Department appears to agree with the view of the President of the Kurla Municipality on the ground that the charges provided for under rules 187 and 188 are not taxes. The R.L.A. is requested to advise whether the view taken by H. & L.G.D. is correct.

Rules 187 and 188 of the Kurla Municipal Rules have been framed under section 46(i) of the Bombay District Municipal Act, 1901, and these rules have been continued to be effective under the Bombay Municipal Boroughs Act, 1925, after the Kurla Municipality was raised to the status of a Borough Municipality. Consequently while considering the legal position in respect of these rules, the provisions of the Bombay District Municipal Act and the corresponding provisions of the Bombay Municipal Boroughs Act will have to be referred to.

Clause (i) of section 46 of the Bombay District Municipal Act, 1901, provides for making rules by a Municipality prescribing, subject to the provisions of Chapter VII, the taxes to be levied in the municipal disctict for municipal purposes, the grounds on which exemptions are to be recognized etc. and the limits of the charges or payments to be fixed in lieu of any tax under section 71. Section 71(1) provides that the Municipality may, instead of imposing a water-rate or, in indi-vidual

S.I./18.5.56.

cases, of levying a rate imposed in respect of the supply of water belonging to the Municipality to, or for use in connection with, any private lands or buildings,

(a) fix at rates not exceeding such as shall be specified in the rules in force under section 46, charges for such supply according to the quantity used, as ascertained by measurement.

(b) arrange with any person, on his application, to supply on payment, periodical or otherwise, water belonging to the Municipality in such quantities or for such purposes, whether domestic etc. on such terms and subject to such conditions as they shall fix by agreement with such person.

In the Committee of Management of Hyderabad vs.Ramchand, 16, Sind L.R. p.98, rules were framed by the Municipality laying down certain rates to be charged for water supply by pipe to private lands or buildings and the question arose whether those rules required to be made in accordance with the provisions of section 60. It was held that charges made by the Municipality for supply of water-connection which may or may not be paid according as a person requires or does not require the connection are not a tax imposed by the Municipality and the rules made for the recovery of such charges do not require previous publication for the purpose of inviting objections, as laid down in section 60, Bombay District Municipal Act; the liability to pay charges depends on an arrangement as completed by section 71 and such an arrangement could not amount to an imposition of tax. The main question in this case would, therefore, be whether rules 187 and 188 provide for an imposition of any tax. Rule 188 can be easily disposed of because it provides for the levy of a meter hire which is not a tax at all under section 59 of the Bombay District Municipal Act, 1901. Consequently, so far as that rule is concerned, no previous publication thereof would be necessary under section 60. Rules 187 fixes charges to be levied by the Kurla Municipality for water supply through separate connections according to quantity and the purpose for which it is supplied. This rule as stated under the heading "limits of charges for the payment fixed in lieu of any tax under section 71" is framed under rule 46(1) read with section 71. Section 71(1) clearly makes a distinction between a water-rate and water-charges. The water-charges levied under section 71(1) are charges fixed by agreement or otherwise on account of water supply and are recoverable in the same.

manner as an amount claimed on account of any tax recoverable under Chapter VIII. In the Municipal Corporation of the City of Bombay vs. Haji Issa Haji Osman, 37 Bom.L.R.1017, it was held that a tax for water-supply by meter though recoverable as arrears of water tax are not property tax. The same reasoning would hold good in the present case and it would follow that the water charges though recoverable as a tax are not in tax within the meaning of section 58. Under section 60 every Municipality before imposing a tax is required to pass a resolution at a general meeting specifying among others the class or classes of persons or of property or of both which the Municipality desires to make liable and any exemptions it may desire to make. By rule 187 the Municipality dies not propose to make any class or classes of persons or of property liable to the water charges but only provides for the levy of charges from the applicant according to the quantity of water and the purpose for which it is supplied. Evidently, therefore, the water charges provided for under rule 187 cannot be considered a tax. If it be not a tax, then clearly the ruling in the Committee of Management of Hyderabad vs. Ramchand applies and it will have to be held that these are mere water charges and not a tax imposed. Clause (i) of section 46 of the Bombay District Municipal Act corresponds to clause(j) of section 58 of the Bombay Municipal Boroughs Act, 1925, with this difference that the words "subject to the provisions of Chapter VII" which were found in the former provision are not to be found in the latter provision whereby the difficulty which was felt to some extent in the Committee of Management of Hyderabad Vs. Ramchand in construing clause (i) of section 46 does not arise in the present case. Clause (viii) of section 59 and section 71 of the Bombay District Municipal Act correspond to clause (x) of section 73 and section 91 of the Bombay Municipal Boroughs Act, 1925, Rule 187 though framed under clause (i) of section 46 of the Bombay District Municipal Act and continued under the Bombay Municipal Boroughs Act will have the same effect as under the Bombay District Municipal Act. Consequently the view taken by the Health and Local Government Department is correct and it is not necessary

that section 75 of the Bombay Municipal Boroughs Act, 1925, should be complied with in respect of the amendment of rule 187.

Sd/- P.M.Iad/30/4.
Remembrancer of Legal Affairs.

U.R. to H. & L.G.D. No.4238, dated the 30th April, 1948.

S.I.P. 18.5.56. 4c.

Office of the R.L.A.

Extention of the electrification scheme beyond the Municipal limits.

The Bombay District Municipal Act,1901. Section 52(a) (ii).

The view taken by the Health & Local Govt. Department in para.3 of its office note at p.33 ante/ is correct. It would not be competent for the Rayer Municipality to extend the scheme to the adjoining villages unless those villages are brought within the municipal district. Clause (a) (ii) of the proviso to section 52 of the Bombay District Municipal Act, 1901, will have no application.

P.M.Iad/20/7.

Remembrancer of Legal Affairs.

U.R. to H.& L.G.D. No.6787, dated the 20th July 1948.

S.I./18.5.56. 4c.

Contribution towards the Mahatma Gandhi Memorial Fund, by Local Bodies.

Some local bodies have expressed a desire to contribute towards the Mahatma Gandhi Memorail Fund. H.M.,L.S.G., therefore, wants to know "what legal position would be in case local bodies contributed towards a fund the amount of which was not likely to be necessarily utilised for the purposes mentioned in in the various Acts concerning the local bodies or within the limits of the local bodies contributing towards such a fund".

Attention is invited to the provisions of sections 51-52, 54 to 56 of the Bombay District Municipal Act, 1901, the corresponding provisions of sections 65, 66, 69 to 71 of the Bombay Municipal Boroughs Act, 1925, sections 50 and 75 to 81 of the Bombay Local Boards Act, 1923 and sections 26, 26A, 2 30, 31 and 32 of the Bombay Village Panchayats Act, 1938. Under section 51 of the Bombay District Municipal Act, (see corresponding section 65 of the Bombay Municipal Boroughs Act) all moneys received by or on behalf of the Municipality by virtue of this Act or any other Act; all taxes, tolls and other imposts, fines, fees, penalties paid to or levied by them under this Act other than fines imposed by a Court; all proceeds of land or other property sold by the Municipality, and all rents accruing from thei land or property sold by the Municipality etc. Shall constitute in Municipal fund and shall be held and dealt with in a similar manner to the property mentio ed in section 50. Under section 52 (vide correspondi section 66 of Boroughs Act) all property vested in th Municipality and all funds recovered by them in accor dance with the provisions of this Act, and all sums accruing to them under the provisions of any law for the time being in force, shall be applied, subject to the provisions and for the purposes of this Act within the limits of the Municipal district. The power of the Municipality to incur expenditure

beyond the limits of the Municipal District is restricted and is permissible only in respect of matters specified in clauses (a), (b) and (c) of the first proviso and in clause (b) of the second proviso of the said section. The purposes of the Act are specified in sections 54 to 56 of the Bombay District Municipal Act (see sections 69 to 71 of Boroughs Act). The obligatory duties in respect of which a Municipality is bound to make reasonable and adequate provisions are specified in sections 54 and 55 of the Bombay District Municipal Act and the discretionary duties in respect of which at its discretion it can make provision from the municipal fund are specified in section 56 of the Bombay District Municipal Act. The effect of sections 68 to 70 of Boroughs Act section 71 of the Boroughs Act.

sections 51, 52, 54 and 56 of the Bombay District Municipal Act (sections 65,66,68 and 71 of Boroughs Act) is that all the property and Municipal fund is held and applied by the Municipality as trustee, subject to the provisions and for the purposes of the Act. A Municipality is a body corporate "Where a corporation is created by statute, its powers are limited and circumscribed by the stature creating it, and extend no further than is expressly stated therein, or is necessarily and properly required for carrying into effect the purposes of its incorporation "(p.72 of Halsbury's Vol.8). It is therefore, clear that a Municipal corporation possesses such powers and such only as the statute creating it specifically confers upon it, and consequently it can exercise no powers which are not expressly granted to it or which are impliedly indispensable to the declared objects and purposes of the corporation.

The power to make contributions towards expenditure incurred out of any public funds no doubt vests in the Municipal corporation but this power is restricted to measures affecting the health, instruction or convenience of the public and calculated to benefit the residents within the limits of the contributing Municipality (vide cl.(b) of the first proviso to section 52 of District Municipal Act and clause (b) of first proviso to section 66 of Boroughs Act).

Though section 77 of the Bombay Local Boards does not specifically provide for making contribution to any public

fund, such expenditure can be incurred under that section "for any of the purposes of the Act". Under section 26(2) of the Village Panchayat Act, a panchayat may with the sanction of the ~~Taluk~~ District Local Board make provision for carrying outside the village ~~as~~ any work of the nature specified in sub-section (1). Thus in the case of Local Boards and Village Panchayats the expenditure incurred outside the area must be in respect of a purpose mentioned in the Act. Attention is invited to R.L.A's opinion No.Q-Munis-Cities 33/39, dated 29-10-39, 98, dated 6-1-36, 211-P, dated 31-8-38, Adv. General's opinion dated 15-7-40, R.L.A's No.170-P Confl., dated 19-10-44. The Advocate-General considers that what is contemplated is a direct benefit to the residents within the Municipal limits. If the fund to which contribution is to be made is not likely to be spent on any measure affecting the health, instruction, safety or convenience of the public resident within the limits of the contributing local body, it would not be legally proper to make contribution from the Municipal fund to any other public fund (cf.R.L.A's No.3525 dated 11-5-46). The legal position appears to be that it is lawful for the Municipalities to make contributions towards expenditure incurred by a public fund outside the Municipal area, provided that such expenditure is for measures affecting the health, insturction, safety or convenience of the public as and calculated to benefit the residents within limits of the contributing Municipality, while local boards and village panchayats may make contributions only for any of the purposes of the Act. The view taken by H.M.(L.S.G.) in para 2 of his minutes is apparently correct. However this question may better be reconsidered after the details of the Mahatma Gandhi Memorial Fund Scheme are known.

P.M.Lad/17/7.

Remembrancer of Legal Affairs.

U.R. to H. & L.G.D., No.584-Confl., dated the 17th July 1948.

S.I./18.5.66. 4c.

Office of the R.L.As.

The Shirpur Municipality proposes to erect an Independence Day Monument costing about Rs.1,000 on the open space on the main road facing the east corner of the Municipal Office. The Commissioner, C.D., reports:

> "Some other Municipalities in this Division have also proposals under consideration for erecting statues of Mahatma Gandhi or other monuments in celebration of the Independence day. The question whether the Municipalities are competent to incur expenditure for these purposes is not free from doubt. In the Cumming's Bombay District Municipal Manual at page 832 it is stated that expenditure on oil painting or statue to mark the appreciation of an individual's services is lawful. This view is open to doubt. As the question is of general importance, I am submitting this case to Government for orders."

The Health and Local Government Department has referred to R.L.A's opinion No.3525 dated the 11th May 1946 and says that it seems it would not be illegal for the Shirpur Municipality to incur the proposed expenditure on the erection of the monument. However, under section 56(m) of the Bombay District Municipal Act, 1901, the Municipality can incur expenditure for the celebration of the Independence Day, it being a public ceremony, and, if the erection of the monument is considered as a part of the celebration, it seems it would be legal for the municipality to incur the expenditure for this purpose. The R.L.A. is requested to advise in the matter.

2. The two relevant provisions are section 56(m) of the Bombay District Municipal Act, 1901, and section 71 of the Bombay Municipal Boroughs Act, 1925. Both these provisions allow municipalities at their discretion to provide out of their property and fund, either wholly or partly, for -

(i) constructing, establishing or maintaining public parks, gardens, libraries, museums, lunatic asylums, halls, offices, dharamsallas, rest-houses and other public buildings, and

(ii) with the previous concurrence of the Collector in the case of Municipalities and by a resolution passed at a general meeting and supported by two-thirds of the.....

the whole number of the Councillors in ~~xxx~~ case Municipal Boroughs, for any public reception, ceremony, entertainment or exhibition within the Municipal area.

It has been consistently held by the R.L.A. that putting up portraits, erecting statues or monuments as a mark of appreciation of any individual's services or as an expression of sympathy would not come within the ambit of section 56(b) or 71(b) of the respective enactments. However, where a Municipality maintain a part or garden or a public building, the erection of a statue would be permissible if it is intend primarily as a decoration of the park, garden or building and, therefore, falling within its reasonable maintenance (cf.R.L.A's opinion No.2138, dated 10-11-1922). It would not be otherwise permissible to provide funds for the erection of a monument or a statue. The proposal by the Shirpur Municipality does not, therefore, fall within clause (b) of section 56.

3. The Independence Day celebration can undoubtedly be regarded as a public ceremony. A ceremony would naturally be a function held on a particular occasion and whatever funds are necessary for holding that function would be permissible, but the erection of a monument or a statue cannot strictly be said to be a part of such function and the proposal of the Shirpur Municipality would not, therefore, fall under clause (m) of section 56.

Sd/- P.M.Lad/14/8.

Remembrancer of Legal Affairs.

U.R. to H.A L.G.D. No.7769, dated the 14th August 1948.

S.I./18.8.56. 4c.

Submitted.

2. Savanur State has merged in the Bombay Province and the administration thereof has been taken over by the Government of Bombay with effect from 8.3.1948. The provisions of Bombay District Municipal Act, 1901 have been adopted mutatis mutandis for the Savanur Municipality. The term of office of the Councillors of the Municipality expired on 20.3.1948. The Municipality has passed a resolution on 20.3.1948 and forwarded the same to the Collector of Dharwar for extension of their term of office of the existing councillors for one year. The collector of Dharwar considers that the Commissioner can extend the term of office under section 17 of the Act read with para 6 of the Administration of the Deccan States Order, 1948. In the absence of specified orders in this behalf the Commissioner however considers it doubtful whether he can extend the term of the Municipality and has referred the matter to Government. The P.& S.D. view which is contained in the special Officer's note at pp-13-14 ante is that under the proviso to clause 4(1) of the Administration of Deccan States Order, 1948. In the absence of any specific orders in this behalf Commissioner, S.D. however considers it doubtful and has forwarded the papers to Govt. the P. & S.D. view which is contained in the special officers note on pp.13-14 ante is that: Government (who alone can) may issue the orders under section 17 of the Bombay District Municipal Act after inviting objections and suggestions from the voters. The H. & L.C.D. considers that since the term of office has already expired it cannot now be extended under section 17 of the B.D.M. Act; and that the term of the outgoing councillors would be deemed to extend to and expire with the day before the date of the first general meeting after the fresh elections. That Department has asked the Commissioner S.D. to submit proposals regarding reconstitution of the Municipality on the basis of joint electorates. On this case H.M.H. & L.C.D. observes:

"I would like to know whether during the intervening

period the present municipal board would be competent to hold its regular meetings or whether the work of the municipality would be carried on by its President and Vice-President without any meetings of the Municipalities."

3. The present councillors of the Savanur Municipality were elected and hold their office under the State Law which was in force there and which has been retained in force by paragraph 4 of the Administration of the Indian States Order, 1948. On 28th July 1948 the Bombay District Municipal Act, 1901 was brought into force in the State by the Indian States (Application of Laws) Order, 1948. Under paragraph 6 of this latter Order the Savanur Municipality shall be deemed to have been constituted under the Bombay District Municipal Act, 1901. The term of the office of the present councillors having expired it cannot now be extended, however there would be no objection to hold general elections even after the expiry of the term since under provisions of sub-section (2) of section 17 of the Bombay District Municipal Act the term of office of the outgoing councillors shall be deemed to extend to and expire with the day before the date of the general meeting held after the new elections. (cf. R.L.A's opinion No.563 dated 18.1.1938). The said section 17(2) is quite independent of section 23(7A) which provides on the expiry of the term of office of a Municipality the president and Vice-President shall continue to carry on the current administrative duties of their offices until such time as the President and the Vice-President shall have been elected and this latter section does not affect the operation of section 17(2). Consequently during the intervening period it would be competent for the Municipal Board to hold its regular meetings (cf. R.L.A's Opinion No.1883 dated 25.3.1935 and 1754 dated 26.2.1941). The intervening period however should not exceed one year i.e. what could be validly extended under the Act. The new elections should therefore be hold as early as possible. (cf. R.L.A's opinion No.1148 dated 5.2.1938).

~~S.I./18.5.56. 4c.~~
T. Y. Chandhri
4/c.

A. H. S.

Office of the R.L.A.

The view taken in the H. & L.G.D. office note dated the 30th September 1948 is correct (see R.L.A's opinions No. 1088 dated 25-5-1938 and No.11754 dated 26-2-1941). As pointed out in R.L.A's opinions Nos.563 dated 18-1-1938 and No.1148 dated 3-2-1938, it would be desirable to hold the elections as early as possible.

P.M.Iad/16/10.

Remembrancer of Legal Affairs.

U.R. to H. & L.G.D. No.9691, dated the 16th October 1948.

S.I./18.5.50. 4c.

Legal Department.

The Acts of other Provinces were examined with a view to see whether they provide for appeals or applications against the decisions in election petition cases but none of them contains such provision. From the earliest times such cases are tried by District Judges an no further appeal has been provided for. The reason why no appeals or applications in revision are provided for seems to be to provide a speedy and cheap remedy in such cases and discourage unnecessary litigation. The view taken by H.M., L.S.G. in his minute of 21.2.1948 at p.32 is correct. As regards the delay caused in the disposal of election petition cases the High Court may be asked to issue instructions to the District Judges as suggested by H.M., L.S.G.

J.R.Dhurandhar/3/1.
Additional Secretary to Government.

U.R. to H. and L.C.D., No.79, dated the 4th January 1949.

S.I./18.5.56. 4c.